

REMARKS

Claims 12-20 were examined and reported in the Office Action. Claims 12-20 are rejected. Claims 12-20 remain.

Applicant requests reconsideration of the application in view of the following remarks.

Regarding the objection to Claims 12-20, Claim 12 and all the subsequent claims refer to an "ear tag" for marking and identifying animals. Claim 12 further says that the ear tag comprises a male component and a female component. Furthermore, the female tag component is said to be "provided with a sampling device". Therefore, Applicant submits that it is entirely clear that the claims are positively reciting the male and female components and the sampling device as structural elements of the ear tag invention.

The "applicator tool" is recited in such a manner that it is referred to functionally rather than as a structural part of the claim. For one thing, if the claim subject matter is "an ear tag" then clearly the applicator tool will not form part of the structure. This, as any skilled person will know, is because an applicator tool is not an integral part of the ear tag but simply a means for applying the ear tag to an animal. However, Applicant has further amended Claim 12 to more clearly refer to the application tool only functionally.

It is asserted in the Office Action that Figures 13 and 14 submitted with the amendment filed on 16 December 2006 are not present in the application file.

In response, Applicant re-submits new Figures 13-14 previously submitted on 16 December 2006, as new Figures.

Approval is respectfully requested.

It is asserted in the Office Action that the oath or declaration is defective.

In response, Applicant will submit a new oath or declaration in compliance with 37 CFR 1.67(a) as requested by the Examiner as soon as possible.

It is asserted in the Office Action that Claims 12-20 are rejected under 35 USC 112, first paragraph, as failing to comply with the enablement requirement.

In response, Applicant submits the previously requested new drawings submitted herewith as Figures 13 and 14.

It is asserted in the Office Action that Claims 12-20 are rejected under 35 USC 103(a) as being unpatentable over Destoumieux (US Patent 6,968,639) in view of Sanjurjo, et al. (US Patent Application 2003/0172560).

Reconsideration and withdrawal of the rejection is requested in view of the structural differences between Claim 12 and the prior art as detailed below.

In Sanjurjo the piece of filter paper is attached to the male component and not the female component as required by claim 12. Also, the filter paper lies along the length of the panel of the male component. This means that the filter paper is sandwiched between the male component and the ear of the animal. Consequently, it is a somewhat involved procedure for a person using the device to grasp the filter paper sandwiched between the panel of the male component and the animals' ear in order to remove the filter paper.

This delicate operation is made not only more difficult but also dangerous by the fact that the person needs to be in close proximity to the animal to which the ear tag is to be attached, which is somewhat pained by the application of the ear tag and, therefore, is not in a particularly good frame of mind! Consequently, the arrangement in Sanjurjo places the person applying the tag at risk of being injured by the pained animal. Because of the inaccessible nature of the filter paper sandwiched between the animals' ear and the panel of the tag, the person needs to be in close proximity to the animal for longer than is desirable in order to enable the person to not only access and grip the filter paper but also remove it from the male component. Also, the filter paper, because it is sandwiched, might not easily release from the male component.

Applicant submits that it is entirely evident that the transverse orientation of the sampling device with absorbent material paper, as now defined in claim 12, overcomes the problem of accessibility. However, what the Examiner apparently has not taken into consideration is that claim 12 refers to the sampling device as not only extending laterally to the female tag component but also having an attachment which, in use, enables the sampling device to be fixed to one of the jaws of the applicator tool. Consequently, when the applicator tool is removed from the animals' ear during the normal ear tagging operation, the sampling device is separated from the female tag component. This attachment is a structure which is not taught or suggested by the prior art.

A further advantage of the present invention is that the absorbent material of the sampling device is in closer proximity to biological material removed from the animals' ear during the application process. This is because the head of the male component moves through the animals ear and carries with it biological material onto the absorbent material. With Sanjurjo the success of the sampling operation is reliant on biological material somehow making its way from the animals wound against the action of the male component in order to flow onto the filter material. The present invention thus, provides a much more positive means of ensuring that a biological sample is applied to the absorbent material during the normal ear tagging operation.

Consequently, it is not simply a matter of taking the concept of a filter paper from Sanjurjo and applying it to Destoumieux, as seems to be suggested by the Examiner. If it were valid to argue that the skilled person would combine Destoumieux and Sanjurjo, then surely the result would be a filter paper applied in the manner of Sanjurjo to the male component. There is no driving force when one combines the teachings of the two cited documents for the sampling device to be attached to the female component and, furthermore, provide a means of attaching the sampling device to the applicator tool so as to make it an automatic function during the normal ear tagging operation to remove the collected sample.

By ignoring the features of the sampling device being attached to the female component, the orientation of the sampling device and the ability to connect the sampling device to the applicator tool, the Examiner says that it would be obvious to combine Sanjurjo with Destoumieux. However, Applicant submits that it is improper to ignore the features of construction defined in claim 12 in order to reach an obviousness conclusion. One must look at the whole construction of the present invention from the point of view of the skilled person. If one does so, then the Examiners' position simply would result in a sampling device being attached to the male component (after all Destoumieux has the sampling punch co-operating with the male component) with the filter material located (sandwiched) between the male tag component and the animals' ear.

In view of the foregoing, it is submitted that claims 12-20 patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone

conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

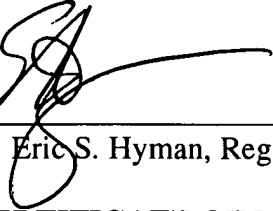
Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN

Dated:

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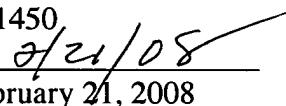
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 Linda Metz

 2/21/08  
February 21, 2008